


Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

MEMORANDUM

To: Julia D'Alesandro, Audit Department

From:  Brent Johnson, General Counsel

Re: Charges Reduced or Plea in Abeyance Entered Informally

Date: October 28, 2004

You have asked the question about whether charges can be reduced or a plea in abeyance entered informally. According to the fact situation that you have provided, you have come across situations in which defendants are referred to the county attorney's office to resolve their cases. After meeting with the defendant, the county attorney comes to the court and tells the judge about any resolution that has been reached. A formal document is never filed. It is not clear from the facts whether the defendant appears with the prosecuting attorney before the judge, or whether the county attorney simply conveys the agreement.

The process of referring a defendant to the county attorney's office to discuss a case is fairly common and there is certainly nothing inappropriate about such action. The issues that are involved relate only to how the case is ultimately resolved before the court.

If a case is resolved through a plea in abeyance, Utah Code Ann. § 77-2(6) requires the defendant to appear before the court to enter the plea. Section 77-2a-3(1) also requires a court to comply with Rule 11 of the Utah Rules of Criminal Procedure in taking a plea. Therefore, if a defendant and prosecutor have reached an agreement on a plea in abeyance, both the defendant and the prosecutor should appear before the judge to formally enter the plea and agreement. The statute contains an exception for traffic school situations, but that does not appear to be an issue here.

If a defendant agrees to plead guilty to a charge, the defendant should also appear before the judge to enter the guilty plea. Rule 11 requires all guilty pleas to be taken in a formal manner. The only exception to this is when a defendant voluntarily forfeits bail on a citation, under Utah Code

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.

Ann. § 77-7-21(c). If a defendant speaks with a prosecutor and then posts bail on a citation, the defendant could voluntarily forfeit the bail without having to appear before the judge. This would be processed the same as any other payment on a citation.

If a defendant has agreed to plead guilty to a reduced charge or reduced bail fine, there must be some documentation to reflect the circumstances by which the charge or bail was reduced. If a defendant has been charged with a citation or information, the defendant and the prosecutor could both appear before the judge and state that the defendant has agreed to plead guilty to a reduced charge. This fact could be recorded on the docket. If the defendant does not appear before the judge, the prosecutor should submit some type of documentation reducing the original charge, or reflecting the reduced bail. This documentation could then support a defendant's voluntary forfeiture of bail.

The short answer to the original question is that I have concerns about the informal process that you have outlined in your e-mail. The court should be more formalized about the record it creates in resolving cases. If you have any questions about this, please let me know.